

1 AMY B. LAWRENCE, ESQ. - Bar # 115874
2 LAWRENCE & ASSOCIATES
3 Attorneys at Law
4 2550 N. Hollywood Way, Suite 202
5 Burbank, CA 91505
6 (818) 843-6442

7 Attorneys for Plaintiff
8 International Bullion Exchange, LLC

FILED
Superior Court of California
County of Los Angeles

OCT 28 2014

Sherri B. Carter, Executive Officer/Clerk
By Raul Sanchez Deputy
Raul Sanchez

9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11
12 IN AND FOR THE COUNTY OF LOS ANGELES

13 INTERNATIONAL BULLION
14 EXCHANGE, LLC, a California Limited
15 Liability Company;

16 Plaintiff,

17 vs.

18 LUCAS "LUKE" ERB, aka LUCAS ASHER,
19 LUKE EMMANUEL, LUKE FRANCIS,
20 MICHAEL WALKER, and HENRY DAVIS,
21 an individual; SIMON BATASHVILI, an
22 individual; CANDICE BIANCA EVANS, aka
23 BIANCA EVANS and HEATHER
24 KENNEDY, an individual; AMERVISE, an
25 entity of unknown form; MERRILL
26 MUTUAL, an entity of unknown form;
27 FAULKNER MANAGEMENT CORP., a
28 California Corporation; FAULKNER MUSIC
LLC, a Delaware Corporation;
INSTRIBUTION LLC, a Delaware Limited
Liability Company, FEDERAL SERVICES
LLC, a California Limited Liability
Company; and DOES 1 through 25, Inclusive,

Defendants.

Case No.: BC 539125 **D-40**

FIRST AMENDED COMPLAINT FOR:

1. BREACH OF WRITTEN CONTRACT
2. BREACH OF FIDUCIARY DUTY
AND/OR DUTY OF LOYALTY
3. CONVERSION/THEFT
4. FRAUD AND/OR CONSPIRACY TO
COMMIT FRAUD
5. INTERFERENCE WITH CONTRACT
6. INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE
7. CONSTRUCTIVE FRAUD
8. UNFAIR COMPETITION
9. MISAPPROPRIATION OF TRADE
SECRETS
10. VIOLATION OF CALIFORNIA
PENAL CODE § 496
11. FRAUDULENT TRANSFER
12. UNAUTHORIZED COMPUTER
ACCESS [California Penal Code § 502]
13. VIOLATION OF THE COMPUTER
FRAUD AND ABUSE ACT [18 U.S.C.
§ 1030]

[Related Requests for Attachment,
Preliminary and Permanent Injunction, and
Appointment of Receiver Over All
Defendant Companies]

JURY TRIAL DEMANDED

1 Plaintiff complains of and alleges the following:

2 **PARTIES**

3 1. Plaintiff INTERNATIONAL BULLION EXCHANGE, LLC is a California Limited
4 Liability Company doing business in the County of Los Angeles.

5 2. Plaintiff is informed and believes that defendant LUCAS "LUKE" ERB, aka
6 LUCAS ASHER, LUKE EMMANUEL, LUKE FRANCIS, MICHAEL WALKER, and HENRY
7 DAVIS, is an individual residing in the County of Los Angeles.

8 3. Plaintiff is informed and believes that defendant SIMON BATASHVILI is an
9 individual residing in the County of Los Angeles.

10 4. Plaintiff is informed and believes that defendant CANDICE BIANCA EVANS, aka
11 BIANCA EVANS and HEATHER KENNEDY, is an individual residing in the County of Los
12 Angeles.

13 5. Plaintiff is informed and believes that defendant AMERVISE is an entity of
14 unknown form doing business in the County of Los Angeles, and/or if not a separate entity, is the
15 dba of defendant LUCAS "LUKE" ERB, aka LUCAS ASHER, LUKE EMMANUEL, LUKE
16 FRANCIS, MICHAEL WALKER, and HENRY DAVIS.

17 6. Plaintiff is informed and believes that defendant MERRILL MUTUAL LLC is a
18 Delaware limited liability company doing business in the County of Los Angeles, or is otherwise an
19 entity of unknown form doing business in the County of Los Angeles.

20 7. Plaintiff is informed and believes that defendant FAULKNER MANAGEMENT
21 CORP. is a California corporation doing business in the County of Los Angeles.

22 8. Plaintiff is informed and believes that defendant FAULKNER MUSIC LLC is a
23 Delaware corporation doing business in the County of Los Angeles.

24 9. Plaintiff is informed and believes that defendant INSTRIBUTION LLC is a
25 Delaware limited liability company doing business in the County of Los Angeles.

26 10. Plaintiff is informed and believes that defendant FEDERAL SERVICES LLC is a
27 California limited liability company doing business in the County of Los Angeles.

28 11. After the initial complaint was filed, Plaintiff filed a doe amendment identifying

1 defendant Doe 1 as MERRILL GOLD, LLC. Plaintiff is informed and believes that defendant
2 MERRILL GOLD, LLC ("Merrill Gold") is an entity of unknown form doing business in the
3 County of Los Angeles. Plaintiff is further informed and believes that defendant MERRILL
4 GOLD, LLC is the entity known as MERRILL MUTUAL LLC, a Delaware limited liability
5 company, and/or if not a separate entity, is the dba of defendant LUCAS "LUKE" ERB, aka
6 LUCAS ASHER, LUKE EMMANUEL, LUKE FRANCIS, MICHAEL WALKER, and HENRY
7 DAVIS.

8 12. Plaintiff is unaware of the true names, capacities, and/or basis for liability of
9 defendants DOES 1 through 25, inclusive, and therefore sues said defendants by their fictitious
10 names. Plaintiff will amend this complaint to allege their true names, capacities, and/or basis for
11 liability when the same have been ascertained. Plaintiff is informed and believes and on that basis
12 alleges that defendants DOES 1 through 25, inclusive, and each of them, are in some manner liable
13 to Plaintiff, including without limitation as alleged below.

14 13. At all times material to this action, each defendant, including those fictitiously
15 named, was the agent, servant, employee, partner, joint venturer, or surety of the other defendants
16 and was acting within the course and scope of said agency with the knowledge, consent,
17 authorization or ratification of each of the other defendants in doing the things alleged in this
18 complaint.

19 STATEMENT OF FACTS

20 14. Since 2009, plaintiff INTERNATIONAL BULLION EXCHANGE, LLC ("IBX")
21 has sold precious metals to investors, including those holding non-retirement accounts (non-
22 qualified funds) as well as Traditional, Roth, SEP or Simple IRA ("retirement") accounts, typically
23 through the following process (or variations thereon):

- 24 a. The customer has (or sets up) self-directed precious metals retirement
25 account(s) that are maintained with a third party custodian, such as Equity
26 Institutional, Entrust or Gold Star, or;
27 b. The customer has (or sets up) a storage account with IBX to store precious
28 metals investments outside of his retirement account, or

- 1 c. The customer makes a direct purchase of precious metals and has them
2 delivered to his/her/its bank or residence.
- 3 d. In the case of retirement accounts, the customer designates IBX as his/her/its
4 precious metals dealer for his/her/its retirement account(s), and a, third party
5 custodian processes the retirement account forms and IRS reporting,
6 including a consent form whereby the customer designates IBX as the
7 precious metals dealer (IBX will assist the customer in submitting this form);
- 8 e. The customer then chooses which precious metal(s) (ingots or coins),
9 including gold, silver, platinum or palladium, to purchase from IBX for his
10 or her retirement and/or non-retirement accounts;
- 11 f. The customer and/or the third party custodian submits the customer's funds
12 to IBX, and IBX ships the physical metals to the customer's financial
13 institution and/or designated third party custodian for receipt into the
14 institution's depository vault for storage, or IBX stores the customers non-
15 qualified metals for the customer, or IBX ships the metals directly to the
16 customer's residence or bank ; and
- 17 g. The customer may thereby own physical precious metals along with stocks,
18 bonds, mutual funds, real estate and other investments in his or her retirement
19 or non-retirement accounts or take physical possession of precious metals.

20 15. Through years of effort and expense, IBX created and compiled an impressive and
21 lucrative client roster, and has developed related proprietary information including without
22 limitation the customers' contact information, account information, precious metals positions in
23 their retirement and/or non-retirement accounts, their needs and preferences, and future precious
24 metal purchasing needs and requirements as well as similar related information for customer leads
25 and potential customers who have expressed an interest in purchasing precious metals from IBX
26 ("Customer Information"). Said Customer Information is not available to the public, and IBX
27 expended substantial time and money developing said Customer Information for its sole and exclusive
28 advantage and benefit. IBX has taken reasonable precautions to protect the secrecy of this information,

1 including without limitation, requiring its representatives to sign confidentiality agreements and
2 otherwise preventing access to the information by keeping its premises, files and computers secure
3 from the public.

4 16. Plaintiff is informed and believes that, in and/or prior to 2013, defendant Lucas
5 "Luke" Erb, aka Lucas Asher, Luke Emmanuel, Luke Francis, Michael Walker, and Henry Davis
6 ("Erb") worked for other precious metals dealers, and that he had brought on defendant Candice
7 Bianca Evans, aka Bianca Evans And Heather Kennedy ("Evans") to purportedly "front" for him
8 (call prospective clients) while at these other companies. Plaintiff is further informed and believes
9 (and was unknown to IBX until recently), that defendants Erb and Evans, along with their co-
10 conspirator Simon Batashvili ("Batashvili"), had a past and continuing pattern and practice of
11 raiding the customers and accounts of those other companies for their own personal benefit.

12 17. At a date not yet known to IBX, but in no event later than in or around March and/or
13 April 2013, defendants Erb, Evans and Batashvili made IBX their next target for raiding customers
14 and accounts, and formulated and agreed to the following plan and scheme which they carried out
15 as follows: Defendant Erb sought a sales person position with IBX, claiming he had vast prior
16 experience and success as a salesperson for precious metal accounts (both retirement and non-
17 retirement). Unaware of defendants' past raids and improprieties, and next plan to raid IBX's
18 customers and accounts, IBX hired Erb. IBX and Erb initially signed an Independent Contractor
19 Agreement (see Exhibit "A") and then IBX and Erb's designated company, Defendant Federal
20 Services LLC, also signed an Independent Contractor's Agreement (see Exhibit "B"). (Hereinafter,
21 all references to defendant Erb shall also be deemed to include defendant Federal Services LLC.)
22 Defendant Erb quickly brought on defendant Evans to purportedly "front" for his prospective IBX
23 clients. Defendants intentionally concealed defendant Batashvili's participation in the plan.

24 18. In secret, defendants Erb, Evans and/or Batashvili systematically gathered IBX
25 Customer Information, not only for those IBX customers which defendant Erb serviced, but also for
26 IBX customers which other IBX salespeople serviced. In doing so, IBX is informed and believes
27 that defendants, and each of them, clandestinely accessed and copied IBX's hard copy and
28 computer files containing IBX Customer Information without authorization.

1 19. Defendants then either took steps to form, or had already formed, defendants
2 Amervise, Merrill Mutual and/or Merrill Gold to act as precious metals sellers in place of IBX.

3 20. Thereafter, and including during the time which defendants Erb and/or Evans were
4 employed by IBX, defendants, and each of them, used IBX Customer Information to solicit and/or
5 raid IBX's customers as follows, without limitation:

6 a. Defendants directly contacted IBX customers, identified themselves as
7 representatives of Amervise, Merrill Mutual and/or Merrill Gold, and
8 solicited the IBX customers to use defendants Amervise, Merrill Mutual
9 and/or Merrill Gold as the customers' precious metal dealers;

10 b. Defendants contacted IBX customers, identified themselves as
11 representatives of IBX, but then told the customers it was a good idea to
12 move their accounts to defendants Amervise and/or Merrill Mutual;

13 c. Defendants encouraged and assisted IBX customers to submit revised consent
14 forms to their third party IRA custodians changing their designation of IBX
15 as the precious metal dealer to Amervise and/or Merrill Mutual; and/or

16 d. Defendants forged and/or submitted without IBX's customers' knowledge or
17 authorization revised consent forms to their third party IRA custodians
18 changing their designation of IBX as the precious metal dealer to Amervise,
19 Merrill Mutual and/or Merrill Gold.

20 21. As a result, defendants, and each of them transferred and misappropriated IBX
21 customer leads, business and accounts for their own personal benefit, and at the expense of and
22 damage to IBX, and will continue to do so unless enjoined by this court.

23 22. IBX is informed and believes that defendants Erb, Evans and/or Batashvili own
24 and/or operate defendants Faulkner Management Corp., Faulkner Music LLC, and Instrubution
25 LLC, and that said entities, and each of them, have participated in, advanced, conspired in, aided
26 and abetted, and/or received the benefits and proceeds of the scheme described herein.

27 23. IBX is further informed and believes that defendants Erb, Evans and/or Batashvili
28 are, and at all times relevant herein were, the alter ego(s) of defendants Amervise, Merrill Mutual,

1 Merrill Gold, Faulkner Management Corp., Faulkner Music LLC, Intribution LLC, and Federal
2 Services LLC (the "Alter Ego Companies"). There now exists, and at all relevant times was, a unity
3 of interest and ownership in the Alter Ego Companies by defendants Erb, Evans and/or Batashvili,
4 and each of them, such that the separate existence of the Alter Ego Companies, and each of them
5 does not exist, including without limitation because they have treated the assets to the Alter Ego
6 Companies as their own, failed to observe corporate formalities and separateness, and used the Alter
7 Ego Companies as mere shells, instrumentalities, and conduits for their personal business
8 transactions and schemes. Based upon the foregoing, an inequitable result would inure absent
9 application of the alter ego doctrine to render defendants Erb, Evans and/or Batashvili jointly and
10 severally liable for the conduct of the Alter Ego Companies.

11 **FIRST CAUSE OF ACTION**

12 **(For Breach of Written Contract**

13 **- Against Defendants Erb and Federal Services LLC)**

14 24. Plaintiff incorporates paragraphs 1 through 23, inclusive, and makes them a part
15 hereof by this reference.

16 25. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., Inc. v. Park*, 220
17 Cal. App. 4th 495 (2013), and other relevant law, Plaintiff brings this action for "contractual remedies,
18 whether or not based upon misappropriation of a trade secret."

19 26. In or around April 2013, defendants Erb and Federal Services LLC entered into the
20 written agreements attached hereto as Exhibits "A" and "B."

21 27. In paragraph 5 of each written agreement, each defendant expressly agreed that:

- 22 a. During their engagement, they would have access to and become acquainted
23 with Plaintiff's customer lists, leads, accounts and procedures, and more
24 generally, Plaintiff's trade secrets, inventions, innovations, processes,
25 information, and records owned and/or used by Plaintiff;
- 26 b. They would not disclose any of the foresaid, directly or indirectly, or use any
27 of the foresaid, either during the term of the Agreement or at any time
28 thereafter, except as required in the course of their engagement with or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

agreed to by Plaintiff;

- c. All files, records, leads, documents and similar items relating to the business of Plaintiff, whether prepared by them or otherwise coming into their possession, shall remain the exclusive property of Plaintiff;
- d. They would not retain any copies of the foregoing without Plaintiff's prior written permissions; and
- e. Upon the expiration or termination of the agreement, they would return all copies of such information to IBX.

28. In paragraph 6 of each written agreement, each defendant expressly agreed that, for a period of 24 months following any termination, they would not:

- a. Directly or indirectly hire, solicit, or encourage any employee, consultant, or contractor of the company to leave Plaintiff's employment; or
- b. Directly or indirectly hire any employee, consultant or contractor who has left Plaintiff's employment or contractual engagement within one year of such employment or engagement.

29. In paragraph 7 of each written agreement, each defendant expressly agreed that:

- a. All of Plaintiff's customers are the property of Plaintiff and their loss of revenue would be hard to replace;
- b. For a period of 24 months following any termination, they will not directly or indirectly solicit or encourage any of Plaintiff's customers to leave or transfer from Plaintiff's books without Plaintiff's express written permission.
- c. The value of each customer is hard to quantify, and that in the event of a breach, they would pay a minimum of \$50,000 per client.

30. The contract terms stated above, and each of them, create independent duties and obligations apart from the trade secret act, and are collectively referred to as the "Non-Competition Agreement."

31. Defendants, themselves and/or through their agents and/or employees, breached the terms and conditions of the Non-Competition Agreement as alleged herein, including without

10/29/2014

1 limitation, by:

- 2 a. While still employed by Plaintiff and after termination, disclosing and/or
3 using, without Plaintiff's consent, Plaintiff's customer lists, leads, accounts
4 and procedures, and more generally, Plaintiff's trade secrets, inventions,
5 innovations, processes, information, and records owned and/or used by
6 Plaintiff, for their own and other Defendants' benefit, for purposes unrelated
7 to and outside the course of their engagement with Plaintiff;
- 8 b. Retaining, without Plaintiff's consent, copies of and information contained in
9 Plaintiff's files, records, leads, documents and similar items relating to the
10 business of Plaintiff, both during and after Defendants' engagement with
11 Plaintiff;
- 12 c. Failing to return all copies of such information to Plaintiff upon their
13 termination;
- 14 d. Directly or indirectly hiring, soliciting, or encouraging Plaintiff's other
15 consultants and/or contractors, including without limitation Defendant Evans,
16 to leave their position with Plaintiff, or hiring them within one year of
17 leaving their position with Plaintiff; and
- 18 e. Directly or indirectly soliciting and/or encouraging Plaintiff's customers to
19 leave or transfer from Plaintiff's books without Plaintiff's express written
20 permission.

21 32. Plaintiff has fully performed all terms and conditions of the agreements, except as
22 excused by Defendants or their agents' conduct.

23 33. As a proximate result of defendants' conduct, IBX has been damaged in an amount to
24 be determined at trial, but believed to be in excess of one million dollars (\$1,000,000), and/or in the
25 alternative is entitled to the liquidated damages provision of the contract in the amount of \$50,000 per
26 customer.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

(For Breach of Fiduciary Duty and/or Duty of Loyalty

- Against all Defendants)

34. Plaintiff incorporates Paragraphs 1 through 33, inclusive, and makes them a part hereof by this reference.

35. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon misappropriation of a trade secret.

36. Apart from the trade secret act, and as a result of their working and contractual relationship with Plaintiff, Defendants, and each of them, entered into a confidential relationship with Plaintiff and owed Plaintiff a fiduciary duty and/or duty of loyalty to protect and keep confidential the highly sensitive and confidential Customer Information shared by IBX with Defendants concerning its customers, leads and their accounts. Plaintiff is informed and believes, and thereon alleges, that said Defendants, and each of them, breached these duties by the conduct alleged herein, including those breaches, misappropriations, and/or unlawful solicitations which occurred during the time they were still employed by Plaintiff.

37. Moreover, and/or alternatively, all defendants, and each of them: (a) conspired with each other in the acts constituting the breaches of duty, by agreeing to said scheme and/or participating in it, and/or (b) aided and abetted and/or otherwise acted in concert in the commission of these acts, in that defendants knew such conduct was wrongful and they gave substantial assistance or encouragement to so act, and/or gave substantial assistance in accomplishing the result and the conduct, separately considered, constitutes a breach of duty.

38. As a proximate result of said Defendants' conduct, IBX has been damaged in an amount to be determined at trial, but believed to be in excess of one million dollars (\$1,000,000).

39. Plaintiff is further informed and believes that it will suffer great and irreparable injury, as alleged above, unless said Defendants are restrained by order of this court.

40. The provisional remedies of attachment and appointment of receiver over all defendant companies are further necessary to prevent defendants from continuing and/or profiting

1 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

2 41. Defendants' acts were and are willful and malicious, and/or made with a conscious
3 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
4 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
5 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
6 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
7 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
8 determined at trial.

9 **THIRD CAUSE OF ACTION**

10 **(For Conversion/Theft - Against All Defendants)**

11 42. Plaintiff incorporates paragraphs 1 through 41, inclusive, and makes them a part
12 hereof by this reference.

13 43. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
14 relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon
15 misappropriation of a trade secret.

16 44. Apart from the trade secret act, Plaintiff was and is the owner of its assets and tangible
17 property, including its computer data and documents, as well as commissions that were earned and
18 owed before a customer was diverted, and it has at all relevant times had ownership and possessory
19 rights thereto.

20 45. Defendants actually and substantially interfered with IBX's ownership of and
21 possessory interests in these assets and converted specific, identifiable property, documents
22 computer data and earned commissions to their own use.

23 46. Moreover, and/or alternatively, all defendants, and each of them: (a) conspired with
24 each other in the acts constituting the conversion and theft, by agreeing to said scheme and/or
25 participating in it, and/or (b) aided and abetted and/or otherwise acted in concert in the commission
26 of these acts, in that defendants knew such conduct was wrongful and they gave substantial
27 assistance or encouragement to so act, and/or gave substantial assistance in accomplishing the result
28 and the conduct, separately considered, constitutes a breach of duty.

1 47. As a result of such conversion, IBX has suffered damages believed to be in excess of
2 one million dollars (\$1,000,000).

3 48. Between the time of defendants' conversion and the filing of this action, IBX
4 expended time and money in pursuit of the converted property, exclusive of attorney fees and costs
5 associated with preparation for litigation of this action.

6 49. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
7 as alleged above, unless said defendants are restrained by order of this court.

8 50. The provisional remedies of attachment and appointment of receiver over all
9 defendant companies are further necessary to prevent defendants from continuing and/or profiting
10 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

11 51. Defendants' acts were and are willful and malicious, and/or made with a conscious
12 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
13 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
14 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
15 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
16 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
17 determined at trial.

18 **FOURTH CAUSE OF ACTION**

19 **(For Fraud and/or Conspiracy to Commit Fraud - Against All Defendants)**

20 52. Plaintiff incorporates Paragraphs 1 through 51, inclusive, and makes them a part
21 hereof by this reference.

22 53. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
23 relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon
24 misappropriation of a trade secret.

25 54. Apart from the trade secret act, Defendants owed an obligation not to commit fraud, or
26 conspire to commit fraud, against Plaintiff, including without limitation before, during and after certain
27 Defendants entered into the written agreement with Plaintiff, and during and after certain Defendants'
28 working relationship with and fiduciary duties and/or duties of loyalty to Plaintiff.

1 55. Fraud by Express Misrepresentation: Defendants Erb, Federal Services, LLC and
2 Does 1-25 made the following representations to IBX:

- 3 a. From in or around April 2013 to approximately January 2014, defendants Erb,
4 Federal Services, LLC and Does 1-25, and each of them, expressly represented,
5 orally to IBX while in IBX's offices, that they would perform their services with
6 such decency and propriety as to not injure IBX's business, give IBX their undivided
7 loyalty, and act in the best interests of IBX;
- 8 b. On or about April 2 and April 4, 2013, defendants Erb, Federal Services, LLC and
9 Does 1-25, and each of them, expressly represented in writing, including in the
10 Independent Contractor Agreement, that they would maintain the confidentiality of
11 IBX's Customer Information, would not use such information except for the benefit
12 of IBX, would return all copies of such information to IBX upon termination, and
13 would not solicit or encourage any IBX customer to leave.
- 14 c. In or around June, 2013, after IBX learned of accusations that these defendants had
15 stolen their former employers' customers and customer leads, IBX directly
16 questioned these defendants thereon, who then further represented to IBX that their
17 former employer(s)' accusations were false, that they had taken nothing from their
18 former employment, and that they had left their former employer because their
19 former employer was under investigation by the City of Santa Monica.

20 56. At the time said defendants made these representations, such representations were
21 not true, and defendants knew the representations were not true. The true facts were that defendants
22 had a past and continuing pattern and practice of raiding the customers and accounts of other
23 companies for their own personal benefit, had been fired from other companies for the same
24 activities, and that defendants had targeted IBX to raid its customers and accounts next, as alleged
25 herein.

26 57. Defendants made these representations with the intent to gain IBX's trust and to be
27 placed and/or remain in a job position that would enable defendants to carry out their scheme. IBX
28 justifiably relied upon the representations by hiring and/or retaining said defendants in their job

1 positions, and IBX was ignorant of the falsity of defendants' representations and their secret intent
2 to misappropriate IBX Customer Information and its customers for their and the other defendants'
3 benefit. Had IBX known the true facts, it would not have placed said defendants in such job
4 position, given them such authority or trust, or paid for their services.

5 58. IBX could not, in the exercise of reasonable diligence, have discovered said
6 defendants' secret intent. As a result, said defendants were placed in a position where they could
7 and in fact did carry out their scheme.

8 59. Fraud by Concealment: Defendants concealed their fraud as follows:

- 9 a. By coming to work for IBX under the auspices of loyalty, defendants Erb,
10 Evans and Federal Services LLC had a duty to disclose their past and
11 continuing pattern and practice of raiding the customers and accounts of other
12 companies for their own personal benefit, and that defendants had targeted
13 IBX to raid its customers and accounts next, as alleged herein. Such duty to
14 disclose arose, in particular, because those facts were peculiarly within their
15 knowledge and not available to IBX.
- 16 b. While still employed by Plaintiff and thereafter, secretly transferred certain of
17 Plaintiff's accounts to themselves without notifying the customers or first
18 obtaining their consent, and attempted to make it appear to the customer(s) they
19 were still doing business with Plaintiff.

20 60. From in or around March 2013 to approximately January 2014, defendants, and each
21 of them, intentionally and willfully failed to disclose these facts.

22 61. IBX was ignorant of the above material facts. Had IBX known the true facts, it
23 would not have agreed to retain said defendants' services.

24 62. Promissory Fraud: On or about April 2 and April 4, 2013, defendants Erb, Federal
25 Services, LLC and Does 1-25, and each of them, expressly represented in writing, including in the
26 Independent Contractor Agreement, that they would maintain the confidentiality of IBX's Customer
27 Information, would not use such information except for the benefit of IBX, would return all copies
28 of such information to IBX upon termination, and would not solicit or encourage any IBX customer

1 to leave.

2 63. Defendants did not intend to perform any of these promises when they made them.
3 The true facts were that, before even signing the agreements, defendants Erb, Federal Services, LLC
4 and Does 1-25, and each of them, intended to misappropriate IBX Customer Information and its
5 customers for their and the other defendants' benefit, and were secretly participating in the scheme
6 alleged herein.

7 64. Defendants, and each of them, intended IBX to rely on the promises so that IBX
8 would hire them and provide them access to IBX's Customer Information.

9 65. IBX reasonably relied upon defendants' misrepresentations because, without
10 limitation, defendants owed a duty of candor and honesty to IBX and further made the
11 representations set forth above in paragraph 55 above.

12 66. Defendants did not perform the promises made.

13 67. As to all theories of fraud: Moreover, and/or alternatively, all defendants, and each of
14 them: (a) conspired with each other in the acts constituting the fraud, by agreeing to said scheme
15 and/or participating in it, and/or (b) aided and abetted and/or otherwise acted in concert in the
16 commission of these acts, in that defendants knew such conduct was wrongful and they gave
17 substantial assistance or encouragement to so act, and/or gave substantial assistance in
18 accomplishing the result and the conduct, separately considered, constitutes a breach of duty.

19 68. As a proximate result of defendants' conduct, IBX has been damaged in an amount to
20 be determined at trial, but believed to be in excess of one million dollars (\$1,000,000).

21 69. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
22 as alleged above, unless said defendants are restrained by order of this court.

23 70. The provisional remedies of attachment and appointment of receiver over all
24 defendant companies are further necessary to prevent defendants from continuing and/or profiting
25 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

26 71. Defendants' acts were and are willful and malicious, and/or made with a conscious
27 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
28 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for

1 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
2 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
3 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
4 determined at trial.

5 **FIFTH CAUSE OF ACTION**

6 **(For Interference With Contract – Against All Defendants)**

7 72. Plaintiff incorporates paragraphs 1 through 71, and makes them a part hereof.

8 73. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
9 relevant law, Plaintiff brings this action as an “other civil remedy” that is not based upon
10 misappropriation of a trade secret.

11 74. Apart from application of the trade secret act, certain Defendants had written
12 agreements, fiduciary duties and/or duties of loyalty to Plaintiff because they worked for Plaintiff, and
13 these Defendants interfered with Plaintiff’s contracts during their employment.

14 75. As a result of a prior course of dealing with its customers, enforceable contracts
15 (written, oral and/or implied) arose between IBX and its customer(s) for the purchase and sale of
16 precious metals for retirement and/or non-retirement accounts.

17 76. Defendants, and each of them, were aware of the contracts.

18 77. IBX is informed and believes, and on that basis alleges, that Defendants, and each of
19 them, intended to undertake, and so undertook, a course of action which would interfere with IBX’s
20 contracts with its customers, apart from infringement of Plaintiff’s trade secrets, and including without
21 limitation:

- 22 a. While still employed by Plaintiff and thereafter, Defendants disparaged Plaintiff
23 to its customers;
- 24 b. While still employed by Plaintiff and thereafter, secretly transferred certain of
25 Plaintiff’s accounts to themselves without notifying the customers or first
26 obtaining their consent, and attempted to make it appear to the customer(s) they
27 were still doing business with Plaintiff.
- 28 c. While still employed by Plaintiff and thereafter, allowed customers to transfer

1 their business to Defendants.

2 78. Moreover, and/or alternatively, all defendants, and each of them: (a) conspired with
3 each other in the acts constituting the interference, by agreeing to said scheme and/or participating
4 in it, and/or (b) aided and abetted and/or otherwise acted in concert in the commission of these acts,
5 in that defendants knew such conduct was wrongful and they gave substantial assistance or
6 encouragement to so act, and/or gave substantial assistance in accomplishing the result and the
7 conduct, separately considered, constitutes a breach of duty.

8 79. As a result of defendants' conduct, IBX's contracts with its customers were in fact
9 disrupted, and defendants' conduct legally and proximately caused damage to IBX in an amount to
10 be determined at trial, but believed to be in excess of one million dollars (\$1,000,000).

11 80. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
12 as alleged above, unless said Defendants are restrained by order of this court.

13 81. The provisional remedies of attachment and appointment of receiver over all
14 defendant companies are further necessary to prevent defendants from continuing and/or profiting
15 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

16 82. Defendants' acts were and are willful and malicious, and/or made with a conscious
17 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
18 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
19 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
20 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
21 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
22 determined at trial.

23 **SIXTH CAUSE OF ACTION**

24 **(For Interference With Prospective Economic Advantage - Against All Defendants)**

25 83. Plaintiff incorporates paragraphs 1 through 82, and makes them a part hereof.

26 84. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
27 relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon
28 misappropriation of a trade secret.

10/29/2014

1 85. Apart from application of the trade secret act, certain Defendants had written
2 agreements, fiduciary duties and/or duties of loyalty to Plaintiff because they worked for Plaintiff, and
3 these Defendants interfered with Plaintiff's economic advantage during their employment.

4 86. As a result of a prior course of dealing with its customers and prospective customers,
5 IBX reasonably expected, and continues to reasonably expect, a prospective economic advantage to
6 sell precious metals to its customers and prospective customers for delivery to their retirement and/or
7 non-retirement accounts.

8 87. Defendants, and each of them, were aware of this prospective economic advantage.

9 88. Plaintiff is informed and believes, and on that basis alleges, that said defendants
10 intended to undertake, and so undertook, a course of action which would interfere with IBX's
11 prospective economic advantage with its customers or prospective customers, as alleged in the Fifth
12 Cause of Action above.

13 89. Moreover, and/or alternatively, all defendants, and each of them: (a) conspired with
14 each other in the acts constituting the interference, by agreeing to said scheme and/or participating
15 in it, and/or (b) aided and abetted and/or otherwise acted in concert in the commission of these acts,
16 in that defendants knew such conduct was wrongful and they gave substantial assistance or
17 encouragement to so act, and/or gave substantial assistance in accomplishing the result and the
18 conduct, separately considered, constitutes a breach of duty.

19 90. In accomplishing the interference, defendants, and each of each them, undertook,
20 conspired in, and/or aided and abetted in acts which were independently wrongful, including without
21 limitation: (a) taking IBX's proprietary Customer Information without authorization, (b) using IBX
22 Customer Information to unlawfully solicit IBX customers and steal their business, (c) misrepresenting
23 to IBX customers that it was a good idea to transfer their business, (d) encouraging and assisting IBX
24 customers to submit revised consent forms to their third party IRA custodians changing their
25 designation of IBX as the precious metal dealer to Amervise, Merrill Mutual and/or Merrill Gold;
26 and/or (e) forging and/or submitting without IBX's customers' knowledge or authorization revised
27 consent forms to their third party IRA custodians changing their designation of IBX as the precious
28 metal dealer to Amervise, Merrill Mutual and/or Merrill Gold.

1 91. As a result of defendants' conduct, IBX's prospected economic advantage with its
2 customers was in fact disrupted, and defendants' conduct legally and proximately caused damage to
3 IBX in an amount to be determined at trial, but believed to be in excess of one million dollars
4 (\$1,000,000).

5 92. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
6 as alleged above, unless said Defendants are restrained by order of this court.

7 93. The provisional remedies of attachment and appointment of receiver over all
8 defendant companies are further necessary to prevent defendants from continuing and/or profiting
9 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

10 94. Defendants' acts were and are willful and malicious, and/or made with a conscious
11 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
12 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
13 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
14 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
15 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
16 determined at trial.

17 SEVENTH CAUSE OF ACTION

18 (For Constructive Fraud - Against All Defendants)

19 93. Plaintiff incorporates paragraphs 1 through 92, inclusive, and makes them a part
20 hereof by this reference.

21 94. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
22 relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon
23 misappropriation of a trade secret.

24 95. In so acting or concealing as described in the Second through Seventh Causes of
25 Action above, and each of them, Defendants breached, and/or conspired with and/or aided and
26 abetted each other to breach, their legal or equitable duties, trust, or confidence to Plaintiff, such
27 that even if not actually fraudulent, said acts or omissions ought to be so treated.

28 95. As a direct and proximate result of the acts and omissions described above, Plaintiffs

1 have been damaged in an amount to be determined at trial, but believed to be in excess of one million
2 dollars (\$1,000,000).

3 96. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
4 as alleged above, unless said Defendants are restrained by order of this court.

5 97. The provisional remedies of attachment and appointment of receiver over all
6 defendant companies are further necessary to prevent defendants from continuing and/or profiting
7 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

8 98. Defendants' acts were and are willful and malicious, and/or made with a conscious
9 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
10 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
11 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
12 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
13 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
14 determined at trial.

15 EIGHTH CAUSE OF ACTION

16 (For Unfair Competition – Against All Defendants)

17 99. Plaintiff incorporates Paragraphs 1 through 98, inclusive, and makes them a part hereof
18 by this reference.

19 100. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
20 relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon
21 misappropriation of a trade secret.

22 101. The California Unfair Competition Law ("UCL") (California Business and Professions
23 Code section 17200 et seq.) prohibits "persons" from engaging in unfair competition, which includes
24 "any unlawful, unfair or fraudulent business act or practice."

25 102. Defendants, and each of them, comprised an "organization of persons" within the
26 meaning of California Business and Professions Code section 17201, in that they associated together
27 for the common purpose of engaging in the course of the unlawful, unfair and/or fraudulent business
28 acts and practices described in the Second through Seventh Causes of Action above, as well as the

1 Tenth, Twelfth and Thirteenth Causes of Action below (to the extent that they address non-trade
2 secret theft and other violation of criminal law).

3 103. Moreover, and/or alternatively, defendants, and each of them: (a) conspired with
4 each other in the acts constituting unfair competition, by agreeing to said scheme and/or
5 participating in it, and/or (b) aided and abetted and/or otherwise acted in concert in the commission
6 of these acts, in that defendants knew such conduct was wrongful and they gave substantial
7 assistance or encouragement to so act, and/or gave substantial assistance in accomplishing the result
8 and the conduct, separately considered, constitutes a breach of duty.

9 104. As a proximate result of said Defendants' conduct, Plaintiff is entitled to restitution in
10 an amount to be determined at trial, but believed to be in excess of one million dollars (\$1,000,000).

11 105. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
12 as alleged above, unless said Defendants are restrained by order of this court.

13 106. The provisional remedies of attachment and appointment of receiver over all
14 defendant companies are further necessary to prevent defendants from continuing and/or profiting
15 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

16 107. Defendants' acts were and are willful and malicious, and/or made with a conscious
17 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
18 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
19 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
20 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
21 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
22 determined at trial.

23 NINTH CAUSE OF ACTION

24 (For Misappropriation of Trade Secrets - Against All Defendants)

25 108. Plaintiff incorporates paragraphs 1 through 107, inclusive, and makes them a part
26 hereof by this reference.

27 109. IBX's Customer Information, as described in paragraphs 14-15 above, constitutes
28 and/or contains trade secrets within the scope of the Uniform Trade Secrets Act, California Civil Code

1 Sections 3426-3426.11.

2 110. By virtue of defendant Erb's and Evans' employment with IBX, all defendants, and
3 each of them, gained access to these trade secrets, and thereafter misappropriated and/or used them as
4 described above.

5 111. Defendants' prior, continued, and threatened misappropriation and/or use of these trade
6 secrets is, and would be, in violation of the Trade Secrets Act.

7 112. Moreover, and/or alternatively, defendants, and each of them: (a) conspired with
8 each other in the acts constituting trade secret violations, by agreeing to said scheme and/or
9 participating in it, and/or (b) aided and abetted and/or otherwise acted in concert in the commission
10 of these acts, in that defendants knew such conduct was wrongful and they gave substantial
11 assistance or encouragement to so act, and/or gave substantial assistance in accomplishing the result
12 and the conduct, separately considered, constitutes a breach of duty.

13 113. As a proximate result of defendants' conduct, IBX has been damaged in an amount to
14 be determined at trial, but believed to be in excess of one million dollars (\$1,000,000).

15 114. IBX will also suffer great and irreparable injury in that defendants, and each of them,
16 will continue to engage in said trade secret violations unless restrained by order of this court, and that
17 IBX will lose the business advantage that it has acquired as a result of expending time and money to
18 develop its Customer Information. Therefore, IBX also seeks preliminary and permanent injunctive
19 relief from this court pursuant to Civil Code Section 3426.2.

20 115. IBX's assets and property are in danger of being further lost, removed, relocated
21 and/or materially destroyed by defendants. The provisional remedies of attachment and appointment
22 of receiver over all defendant companies is necessary to prevent defendants from continuing and/or
23 profiting from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

24 116. Defendants' acts were and are willful and malicious, and/or made with a conscious
25 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential and
26 trade secret information with the deliberate intent to injure IBX's business and/or obtain for themselves
27 the financial rewards due Plaintiff. Defendant entities had advance knowledge that its agents and/or
28 employees would so act and were so acting, and/or authorized and/or ratified such continued

1 violations. As a result, Plaintiff is entitled to punitive damages in an amount to be determined at trial.

2 117. In addition, pursuant to Civil Code Section 3426.4 of the Trade Secrets Act,
3 Defendants' acts were willful and malicious, and Plaintiff is entitled to attorneys' fees.

4 **TENTH CAUSE OF ACTION**

5 **(For Violation of California Penal Code § 496**

6 **Against All Defendants)**

7 115. Plaintiff incorporates paragraphs 1 through 114, inclusive, and makes them a part
8 hereof by this reference.

9 116. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
10 relevant law, Plaintiff brings this action on two separate grounds:

- 11 a. an "other civil remedy" that is not based upon misappropriation of a trade
12 secret; and/or
13 b. a "criminal remed[y], whether or not based upon misappropriation of a trade
14 secret."

15 117. Defendants violated California Penal Code section 496(a) in three ways (inclusive,
16 and/or in the alternative): (1) as alleged in the First through Eighth Causes of Action above, by theft
17 of Plaintiff's non-trade secret property that had been stolen or obtained by theft, knowing the
18 property to be so stolen or obtained; (2) by theft of Plaintiff's Customer Information, even if some
19 or all of it does not constitute a trade secret, that had been stolen or obtained by theft, knowing the
20 property to be so stolen or obtained (as a "criminal remedy"); and/or (3) as set forth in the Ninth
21 Cause of Action above, by theft of Plaintiff's trade secrets, that had been stolen or obtained by theft,
22 knowing the property to be so stolen or obtained. Without limitation, Defendants:

23 A. Committed theft under Penal Code section 484, by (i) feloniously stealing,
24 taking, carrying, leading and/or driving away Plaintiff's personal property; (ii) knowingly and
25 designedly, by false or fraudulent representations or pretenses, defrauding Plaintiff of money or
26 personal property; and/or (iii) fraudulently appropriating Plaintiff's property which had been
27 entrusted to them.

28 B. Committed theft by trick, by (i) obtaining possession of property they each

1 knew was owned by Plaintiff; (ii) obtaining Plaintiff's consent to their possession or use of the
2 property through fraud or deceit, without limitation by stating the property would be used for
3 certain purposes while intending to use it for different purposes or in a different way; (iii) intending
4 to deprive Plaintiff of the property permanently or of a major portion of its value; and (iv) keeping
5 said property, even though Plaintiff did not intend to transfer ownership of the property to them.

6 C. Committed theft by false pretenses, by knowingly and intentionally deceiving
7 Plaintiff by false or fraudulent representations or pretenses, including giving information they knew
8 was false, making representations recklessly, without information justifying a reasonable belief in
9 its truth, making a promise with no intention of doing that which was promised, or withholding
10 information while under a duty to disclose it.

11 D. Committed theft by embezzlement, by (i) taking property Plaintiff entrusted
12 to them, which Plaintiff did because it trusted them, (ii) fraudulently converting the property for
13 their benefit, and (iii) intending to deprive Plaintiff of the use of their property.

14 E. Committed theft of a trade secret, in violation of California Penal Code
15 section 499c(b), by (i) acting with an intent to deprive or withhold the control of a trade secret from
16 Plaintiff, and/or with an intent to appropriate Plaintiff's trade secret to his or her own use or to the
17 use of another, and (ii) stealing, taking, carrying away, or using without authorization, Plaintiff's
18 trade secret; and/or fraudulently appropriating article(s) representing Plaintiff's trade secret
19 entrusted to Defendants; and/or having unlawfully obtained access to the article, without authority
20 making or causing to be made a copy of any article representing Plaintiff's trade secret; and/or
21 having obtained access to the article through Defendants' relationship of trust and confidence with
22 Plaintiff, without authority and in breach of the obligations created by that relationship, making or
23 causing to be made, directly from and in the presence of the article, article(s) representing
24 Plaintiff's trade secret.

25 118. Defendants, and each of them, further violated California Penal Code section 496(a)
26 by concealing, selling, withholding, or aiding in concealing, selling, or withholding, said property
27 and Customer Information from Plaintiff.

28 119. As a direct and proximate result of the acts and omissions described above, Plaintiff

1 has been damaged in an amount to be determined at trial, but believed to be in excess of one million
2 dollars (\$1,000,000).

3 120. Pursuant to California Penal Code section 496(c), Plaintiff seeks statutory treble
4 damages, costs of suit, and reasonable attorney fees.

5 **ELEVENTH CAUSE OF ACTION**

6 **(For Fraudulent Transfer - Against All Defendants)**

7 121. Plaintiff incorporates paragraphs 1 through 120, inclusive, and makes them a part
8 hereof by this reference.

9 122. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
10 relevant law, Plaintiff brings this action as an "other civil remedy" that is not based upon
11 misappropriation of a trade secret.

12 123. Apart from the trade secret act, Plaintiff is entitled to reach those assets and proceeds
13 which have been fraudulently transferred by the misappropriating Defendants to other defendants.

14 124. IBX is informed and believes that defendants Erb, Evans and/or Batashvili own
15 and/or operate defendants Faulkner Management Corp., Faulkner Music LLC, and Instrubution
16 LLC, and that said entities, and each of them, have participated in, advanced, conspired in, aided
17 and abetted, and/or received the benefits and proceeds of the scheme described herein.

18 125. In particular, defendants Erb, Evans, Batashvili, Federal Services LLC, Amervise,
19 Merrill Mutual, and/or Merrill Gold ("Transferors") transferred IBX's property and proceeds to
20 Faulkner Management Corp., Faulkner Music LLC, and Instrubution LLC ("Transferees"). Said
21 transfer was made without said transferees receiving reasonably equivalent value for the property
22 transferred, and for the purpose of converting said property, and otherwise hiding said property
23 proceeds from recovery by IBX.

24 126. Transferors made the transfer to Transferees with the actual intent to hinder, delay,
25 and defraud its creditors, including IBX.

26 127. Moreover, and/or alternatively, all defendants, and each of them: (a) conspired with
27 each other in the acts constituting the fraudulent transfer and/or conversion, by agreeing to said
28 scheme and/or participating in it, and/or (b) aided and abetted and/or otherwise acted in concert in

1 the commission of these acts, in that defendants knew such conduct was wrongful and they gave
2 substantial assistance or encouragement to so act, and/or gave substantial assistance in
3 accomplishing the result and the conduct, separately considered, constitutes a breach of duty.

4 128. As a direct and proximate result of this wrongdoing, IBX has suffered, and will
5 continue to suffer, damages in an amount to be proven at trial, but believed to be in excess of one
6 million dollars (\$1,000,000).

7 129. Plaintiff is further informed and believes that it will suffer great and irreparable injury,
8 as alleged above, unless said defendants are restrained by order of this court.

9 130. The provisional remedies of attachment and appointment of receiver over all
10 defendant companies are further necessary to prevent defendants from continuing and/or profiting
11 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

12 131. Defendants' acts were and are willful and malicious, and/or made with a conscious
13 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's confidential
14 and trade secret information with the deliberate intent to injure IBX's business and/or obtain for
15 themselves the financial rewards due Plaintiff. Defendant entities had advance knowledge that its
16 agents and/or employees would so act and were so acting, and/or authorized and/or ratified such
17 continued violations. As a result, Plaintiff is entitled to punitive damages in an amount to be
18 determined at trial.

19 **TWELFTH CAUSE OF ACTION**

20 **(For Unauthorized Access to Computers, Computer Systems and Computer Data**

21 **[California Penal Code § 502] – Against All Defendants)**

22 132. Plaintiff incorporates paragraphs 1 through 131, inclusive, and makes them a part
23 hereof by this reference.

24 133. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
25 relevant law, Plaintiff brings this action as:

- 26 a. an "other civil remedy" that is not based upon misappropriation of a trade
27 secret; and
28 b. a "criminal remed[y], whether or not based upon misappropriation of a trade

1 secret.”

2 134. Pursuant to California Penal Code § 502(e), the owner or lessee who suffers damage
3 or loss by reason of a violation of Penal Code § 502 may maintain a civil action against the violator
4 to obtain compensatory damages and injunctive relief or other equitable relief.

5 135. Defendants, and each of them, committed, conspired to commit, and/or aided and
6 abetted the following acts in violation of California Penal Code § 502, including without limitation:

- 7 a. knowingly accessing and without permission altered, damaged, deleted, destroyed,
8 and/or otherwise used IBX’s computer data, computer(s), computer system(s) and/or
9 computer network(s) in order to either (A) devise and execute a scheme or artifice to
10 defraud, deceive and/or extort; and/or (B) wrongfully control or obtain money,
11 property and/or data;
- 12 b. knowingly accessed and without permission took, copied, and/or made use of data
13 and/or supporting documentation from IBX’s computer(s), computer system(s),
14 and/or computer network(s), and/or existing or residing internal or external to a
15 computer, computer system, or computer network;
- 16 c. knowingly and without permission used or caused to be used IBX’s computer
17 services;
- 18 d. knowingly accessed and without permission added, altered, damaged, deleted and/or
19 destroyed IBX’s data, computer software, and/or computer program(s) which resided
20 or existed internal or external to a computer, computer system, and/or computer
21 network;
- 22 e. knowingly and without permission provided access to IBX’s computer(s), computer
23 system(s), and/or computer network(s); and/or
- 24 f. knowingly and without permission accessed and/or caused to be accessed IBX’s
25 computer(s), computer system(s) and/or computer network(s).

26 136. IBX has suffered and/or will suffer damage and/or loss by reason of defendants’
27 violation of § 502, including without limitation, expenditures to verify the nature and extent of the
28 unauthorized access, alteration, deletion, damage and destruction to its computer systems, programs

1 and data, expenditures to recover the deleted and/or damaged information in computer storage
2 devices; expenditures to change computer passwords and otherwise prevent further unauthorized
3 access; attorneys' fees to cause defendants to return all information taken ; damages relating to
4 IBX's potential liability to its clients and expenses incurred in its attempt to ameliorate relations
5 with its clients; and wages paid to defendants while committing such wrongful acts.

6 137. IBX is entitled to equitable relief against defendants, including, without limitation,
7 an injunction ordering that, among other things, defendants and their respective agents, servants and
8 employees, and all other persons or entities in concert or participation with them, are (1) prohibited
9 from making any use of, disclosing, disseminating, accessing, copying, altering, taking, deleting,
10 damaging, disrupting and/or destroying IBX's electronic data, computers, computer systems,
11 computer networks, computer software, and computer services, and (2) required to return all such
12 information in their possession.

13 138. The provisional remedies of attachment and appointment of receiver over all
14 defendant companies are further necessary to prevent defendants from continuing and/or profiting
15 from their wrongful acts and/or from acting in further derogation of Plaintiff's rights.

16 139. Defendants' acts were and are willful and malicious, and/or made with a conscious
17 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's computer
18 information with the deliberate intent to injure IBX's business and/or obtain for themselves the
19 financial rewards due Plaintiff. Defendant entities had advance knowledge that its agents and/or
20 employees would so act and were so acting, and/or authorized and/or ratified such continued
21 violations. As a result, Plaintiff is entitled to punitive damages in an amount to be determined at trial.

22 **THIRTEENTH CAUSE OF ACTION**

23 **(For Violation of the Computer Fraud and Abuse Act**

24 **[18 U.S.C. § 1030] – Against All Defendants)**

25 140. Plaintiff incorporates paragraphs 1 through 139, inclusive, and makes them a part
26 hereof by this reference.

27 141. Based upon Civil Code Section 3426.7(b), *Angelica Textile Servs., supra*, and other
28 relevant law, Plaintiff brings this action as:

- 1 a. an "other civil remedy" that is not based upon misappropriation of a trade
2 secret; and
3 b. a "criminal remed[y], whether or not based upon misappropriation of a trade
4 secret."

5 142. Pursuant to 18 USC § 1030(g) of the Computer Fraud and Abuse Act ("CFAA"), any
6 person who suffers damage or loss by reason of a violation of § 1030 may maintain a civil action
7 against the violator to obtain compensatory damages and injunctive relief or other equitable relief.

8 143. Defendants, and each of them, committed, conspired to commit, and/or aided and
9 abetted the following acts in violation of 18 USC § 1030 et seq., including without limitation:

- 10 a. intentionally accessing IBX's computer(s) without authorization and/or exceeding
11 authorized access, and thereby obtaining information from protected computer(s) [18
12 USC § 1030(a)(2)(C)];
13 b. knowingly and with intent to defraud, accessing IBX's computer(s) without
14 authorization, and/or exceeding authorized access, and by means of such conduct
15 furthering their intended fraud and/or obtaining things of value [18 USC §
16 1030(a)(4)];
17 c. knowingly causing the transmission of a program, information, code, or command,
18 and as a result of such conduct, intentionally causing damage without authorization
19 to IBX's computer(s) [18 USC § 1030(a)(5)(A)];
20 d. intentionally accessing IBX's computer(s) without authorization, and as a result of
21 such conduct, recklessly causing damage [18 USC § 1030(a)(5)(B)]; and/or
22 e. intentionally accessing IBX's computer(s) without authorization, and as a result of
23 such conduct, causing damage and loss [18 USC § 1030(a)(5)(C)].

24 144. IBX has suffered and/or will suffer economic damage and/or loss by reason of
25 defendants' violation of § 1030, including without limitation, expenditures to verify the nature and
26 extent of the unauthorized access, alteration, deletion, damage and destruction to its computer
27 systems, programs and data, expenditures to recover the deleted and/or damaged information in
28 computer storage devices; expenditures to change computer passwords and otherwise prevent

1 further unauthorized access; attorneys' fees to cause defendants to return all information taken by
2 them; damages relating to IBX's potential liability to its clients and expenses incurred in its attempt
3 to ameliorate relations with its clients; and wages paid to defendants while committing such
4 wrongful acts.

5 145. Defendants' conduct has involved, and/or will involve, loss to IBX for, at minimum,
6 a one year period aggregating at least \$5,000 in value.

7 146. IBX is entitled to equitable relief against defendants, including, without limitation,
8 an injunction ordering that, among other things, defendants and their respective agents, servants and
9 employees, and all other persons or entities in concert or participation with them, are (1) prohibited
10 from making any use of, disclosing, disseminating, accessing, copying, altering, taking, deleting,
11 damaging, disrupting and/or destroying IBX's electronic data, computers, computer systems,
12 computer networks, computer software, and computer services, and (2) required to return all such
13 information in their possession.

14 147. Defendants' acts were and are willful and malicious, and/or made with a conscious
15 disregard of IBX's rights, in that they secretly planned to misappropriate and use IBX's computer
16 information with the deliberate intent to injure IBX's business and/or obtain for themselves the
17 financial rewards due Plaintiff. Defendant entities had advance knowledge that its agents and/or
18 employees would so act and were so acting, and/or authorized and/or ratified such continued
19 violations. As a result, Plaintiff is entitled to punitive damages in an amount to be determined at
20 trial.

21 WHEREFORE, IBX prays judgment against defendants as follows:

22 1. For an order requiring defendants, and each of them, to return to IBX all copies and
23 files of any documents or data in their possession, custody, or control concerning IBX, its Customer
24 Information, or its business operations, customers, or affairs;

25 2. For a temporary restraining order, preliminary injunction, and permanent injunction
26 enjoining defendants, and each of them, from using or disclosing IBX's Customer Information in any
27 form or otherwise unfairly competing with IBX;

28 3. For an order of attachment;

- 1 4. For the immediate appointment of receiver to take control over all defendant
2 companies;
3 5. For general damages in a sum exceeding the minimum jurisdiction of this court
4 according to proof at trial;
5 6. For an award of the compensation already paid to Defendants while employed by IBX;
6 7. For attorney fees incurred by IBX in this action, if and as permitted by statute or other
7 law, in an amount according to proof at trial;
8 8. For punitive damages (or statutory or treble damages) as applicable and to the extent
9 available in an amount to be determined at trial;
10 9. For pre-judgment interest in the amount provided by law;
11 10. For costs of suit incurred herein; and
12 11. For such other further relief as the court may deem proper.

13
14 Dated: October 28, 2014

LAWRENCE & ASSOCIATES

15
16 By: 

17 AMY B. LAWRENCE
18 Attorneys for Plaintiff
19 International Bullion Exchange, LLC
20
21
22
23
24
25
26
27
28

10/29/2014

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
A

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, declare as follows:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2550 Hollywood Way Suite 202 Burbank, CA 91505.

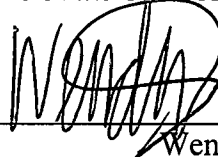
On October 28, 2014, I served the within documents, entitled as follows **FIRST AMENDED COMPLAINT**:

- ☒ BY U.S. MAIL [Code Civ. Proc. §1013(a)] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ BY OVERNIGHT DELIVERY [Code Civ. Proc. §1013(d)] by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at Los Angeles, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 1925 Century Park East, Century City, California in the ordinary course of business on the date of this declaration.
- ☐ BY ELECTRONIC SERVICE [Code Civ. Proc. §1010.6] by electronically mailing the document(s) listed above to the e-mail address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure Section 1010.6.

George B. Newhouse, Esq.
Nannina L. Anioni, Esq.
Henry L. Whitehead, Esq.
BROWN WHITE & NEWHOUSE, LLP
333 South Hope Street, 40th Floor
Los Angeles, CA 90071-1406

Executed on October 28, 2014, in Burbank, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Wendy Castillo